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BROOKS FIBER COMMUNICATIONS

August 18, 1997

Ms. Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N. W.
Washington, D.C. 20554

Dear Ms. Keeney:

Ex parte communication re: Request for Expedited Letter Ruling — Collocation of Remote Switch Modules, CC Docket No. 96-98

Brooks Fiber Communications ("Brooks") requests that the Commission place on public notice, and take prompt action upon, the Petition for Partial Reconsideration filed in the above-captioned docket by MFS Communications Company, Inc. on September 30, 1996.[1] Brooks particularly urges the Commission to take favorable action upon MFS' request for a clarification that new entrants "...should be allowed to collocate remote switch modules (RSMs or EXMs in industry parlance) of traditional circuit switches."[2] For the reasons we set out in this letter, collocation of EXMs is critically necessary to Brooks' ability to compete fairly and efficiently in local telecommunications markets.[3]

Brooks requests that the Commission reexamine this issue on an expedited schedule because the current denial by some incumbent local exchange companies ("ILECs") of our ability to collocate EXMs is contrary to the public interest, prevents Brooks from being able to provide services on unbundled loops to customers at parity to those same ILECs and because state commissions to whom this decision was delegated in the original order have reached inconsistent decisions on this issue, which prevents Brooks from being able to provide a consistent service level to its customers from state to state. Brooks' customers in various states have detected this inconsistency in service level from that provided by the ILEC and have expressed their dissatisfaction with it. Some have already re-migrated to service from the ILEC to correct what is a technical problem - a problem that the ILECs will not allow us to solve for policy and

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[1] Petition for Partial Reconsideration and Clarification of MFS Communications Company, Inc., in CC Docket Nos. 96-98 and 95-185 (Sept. 30, 1996) ("MFS Petition").

[2] MFS Petition at 13.

[3] As the Eighth Circuit Court of Appeals recently found, this Commission is fully empowered by the Telecommunications Act of 1996 to enact rules requiring physical collocation of equipment at the premises of incumbent local exchange carriers. *Iowa Utilities Board v. FCC*, Nos. 96-3321 *et seq.*, slip op. at 57 (8th Cir. July 18, 1997).

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anticompetitive agenda reasons. We are concerned that we have and will continue to lose customers if this issue is not addressed quickly and with finality by the Commission.

Brooks has chosen to utilize Lucent Technologies equipment throughout its systems in almost every state. The type of equipment made by Lucent which is compatible with the 5ESS 2000 switches that Brooks has deployed in most of its markets, to connect with unbundled loops in collocations, is either the SLC2000 or EXMs. SLC2000's do not have switching capability. EXMs can be deployed either with switching capability enabled or without the switching capability. Several of the ILECs with which Brooks interconnects have refused to allow Brooks to utilize EXMs and thus we have had to deploy SLC2000s instead. This equipment choice has technical limitations that prevent Brooks from being able to serve unbundled loops at parity with those ILECs as to data throughput rates when compared with the data rates available on those same loops when connected directly with the ILECs' switches.

The reason for this is that SLC2000's utilize a technology called "robbed bit signaling." Use of this technology in the SLC2000's means that when an unbundled loop is connected to SLC2000 equipment, a modem rated at 28,800, 33,600 or higher bits per second (bps) will only be able to obtain a speed rate of 26,400 bps using the clearest possible line. Brooks has tested every available piece of equipment provided by Lucent which would appear, based on product descriptions, to get around this problem. We have been urging the vendor, Lucent, since last year, to provide a solution to the problem and have received no firm date by which the solution will be available. Lucent has represented to Brooks and to the ILECs that the solution for this problem is not currently available and will not be available for the SLC2000 until at least second quarter of next year.

EXMs do not use this method of signaling and thereby provide full throughput of traffic at the rated speed on unbundled loops in parity with the throughput possible when an ILEC's customer is directly attached to the ILEC switch via that same loop. Unless Brooks is able to collocate EXMs in ILEC end offices as soon as possible, Brooks will be unable to provide service to customers via unbundled loops which is equivalent to what the ILECs can provide. Unless EXMs can be collocated, any provider using Lucent 5ESS switches, which are the best technology available in switching available today, will be at a disadvantage relative to its competitors. Thus, it is likely that facilities-based competition will be impeded for a significant period of time, simply based on a technology issue, in contravention to the goals of the Telecommunications Act of 1996.

In addition to this technical issue, Brooks has determined that the ability to utilize EXMs reduces costs for both new entrants (CLECs) and ILECs. The EXM enables some "switching" and "intercom" functions when used in collocations in ILEC central offices. The SLC2000 does not provide any switching or intercom capability. The SLC2000 module can serve approximately 4,600 lines per 6 bay installation in a collocation cage. The EXM can serve approximately 5,200 lines in that same space. The cost differential between the SLC2000 and EXMs per line "crosses" over at about the 2,000 to 4,000 line level, depending on how the EXM is software equipped. Most of Brooks' requested collocations are designed to connect to at least a minimum of 4,800 unbundled loops. In addition to the basic cost of the equipment, EXMs can serve more

lines and take up the same amount of space in the collocation cage as the number of SLC2000's needed to serve 4,600 lines. The EXM at an equivalent number of lines, uses less power and requires less HVAC equipment to be installed and which has to be paid for by the CLEC. ILECs use EXMs regularly in their networks.

Finally, the EXM's ability to do "switching" or "intercom" between lines attached to it, means that the CLEC has to install fewer trunks between its switch and the ILECs tandem switch. Further, it reduces the load on the ILECs trunks from its end office back to its tandem switch. It also allows for switching to occur between customer lines in the end office when trunks or switches back at both companies' tandem or other central offices are blocked or out of service.

In summary, if EXMs can be collocated and allowed to do switching (1) demand for collocation space, power and HVAC equipment, entrance facilities etc. will be reduced from what it otherwise would be, freeing space etc. for other CLECs or the ILEC in that office, (2) demand for trunking and trunk "hooks" on tandem and end office switches is reduced, with commensurate reductions in costs of network deployment to both ILECs and CLECs and (3) better redundancy in end offices for CLECs, and potentially, ILECs is achieved.

As these facts show, EXMs clearly are "...equipment necessary for interconnection or access to unbundled elements..." and must, therefore, be allowed to be collocated on ILEC premises.[4] As the Commission has made clear, collocation of equipment is necessary, within the meaning of the Telecommunications Act of 1996, where "...alternative equipment would perform the same function, but with less efficiency or at greater cost."[5]

USWest, Pacific Bell and Nevada Bell have denied Brooks the right to collocate switching enabled EXMs in their end offices. Brooks has gone through arbitration proceedings under the Act in Arizona and New Mexico on this issue with USWest. In Arizona, we were granted the opportunity to collocate switch enabled EXMs. In New Mexico, we were only allowed to collocate switch disabled EXMs. Following our arbitration in New Mexico, AT&T's New Mexico arbitration result allowed them to collocate switch-enabled EXMs based upon the higher cost to disable the switching functionality of EXMs. Even though we were granted a most favored conditions clause by the NMSCC in the Brooks arbitration, we cannot take advantage of the AT&T result until their agreement has been finally approved by the NMSCC. That has dragged on for many months because AT&T and USWest cannot agree on language to implement the NMSCC's order in their arbitration and there is no timetable in place by which that agreement must be in place and final. In California and Nevada, Brooks has repeatedly requested that Pacific and Nevada Bell allow us to collocate EXMs, but has been told by both Pacific and Nevada Bell, as well as recently by Southwestern Bell, the new owner of the Pacific and Nevada Bell, that we cannot collocate EXMs.

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[4] 47 U.S.C. § 251 (c) (6).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order at ¶ 579 (1996).

This is in direct conflict with the earlier SBC position on this issue who, albeit reluctantly, agreed to allow Brooks to collocate EXMs in SBC service territory, without arbitration, in its voluntary interconnection agreement. Pacific's position is based on "corporate policy" and the statement in the initial FCC order on interconnection that it was up to the states to determine what could be collocated in end offices, that the FCC has not required the ILECs to allow switching devices in their end offices and that the California Public Utilities Commission (CPUC) has not required that Pacific allow collocation of ECMs in arbitrations with AT&T and MCI. This is despite the fact that they know and have agreed that collocation of EXMs is more efficient, and denial of collocation of EXMs prevents us from providing service to customers at parity with their network[6]. We note that the CPUC has reached inconsistent decisions on this issue in the arbitrations over the AT&T and MCI interconnection agreements with GTE, in the former case requiring GTE to allow AT&T to collocate any equipment used or necessary to pick up unbundled loops, and denying MCI that same ability. Other ILEC's in other states have agreed without arbitration to allow us to collocate EXMs. Despite the delegation of this decision to the states in the FCC's first interconnection order, the FCC did reserve its right to readdress this issue. Brooks appeals to the FCC to issue an order which will achieve consistency in approach on this issue among states as a matter of both policy and efficiency.[7]

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[6] See attached letter to Mr. Dorman of Pacific.

[7] "580. Consistent with this interpretation, we conclude that transmission equipment, such as optical terminating equipment and multiplexers, may be collocated on LEC premises. WE also conclude that LECs should continue to permit collocation of any type of equipment currently being collocated to terminate basic transmission facilities under the Expanded Interconnection requirements. In addition, whenever a telecommunications carrier seeks to collocate equipment for purposes within the scope of 251(c)(6), the incumbent LEC shall prove to the state commission that such equipment is not "necessary, " as we have defined that term, for interconnection or access to unbundled network elements. State commissions may designate specific additional types of equipment that may be collocated pursuant to section 251 (c)(6).

581. We do not find, however, that section 251 (c)(6) requires collocation of equipment used to provide enhanced services, contrary to the arguments of the Association of Telemessaging Services International. We also decline to require incumbent LECs to allow collocation of any equipment without restriction. Section 251(c)(6) requires collocation only of equipment "necessary for interconnection or access to unbundled elements." Section 251 (c)(2) requires incumbent LECs to provide "interconnection" for the "transmission and routing of telephone exchange service and exchange access, " and section 251 (c)(3) requires incumbent LECs to provide access to unbundled network elements " for the provision of a telecommunications service." Section 251 (c)(6) therefore requires incumbent LECs to provide physical or virtual collocation only for equipment "necessary" or used for those purposes. We find that section 251 (c)(6) does not require collocation of equipment necessary to provide enhanced services. At this time, we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements. We recognize, however, that modern technology has tended to

Based upon technical concerns, in the interest of consumers who want the best service (and want it now), and in the public interest, because of the need to assure the efficiency of networks and their redundancy, Brooks requests that the FCC take up the MFS petition and set a proceeding schedule to address this issue quickly, similar to the speed with which it has addressed the recent petition filed by ALTS regarding whether Internet traffic is local traffic for purposes of local compensation. A final concern that Brooks has is that any decision that would be issued by the FCC on this issue should be directed to enforcement by the states so that it can be immediately inserted into interconnection agreements as a change in rules that does not require CLECs to have to arbitrate this issue again in each state. If we were to have to do so, it would further delay us from being able to provide our customers with the quality of service that they so clearly tell us that they want.

Please don't hesitate to call on me for further clarification or information at (314) 878-1616.

In accordance with the Commission's ex parte rules, we are filing two copies of this letter and attachment with the Secretary of the Commission for placement in the public record.

Thank you,

John Shapleigh

John Shapleigh
Executive Vice President, Regulatory and Corporate Development

Attachments

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blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is in dispute, that state commissions will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements. We also reserve the right to reexamine this issue at a later date if it appears that such action would further achievement of the 1996 Act's procompetitive goals. Finally, because we lack an adequate record on the issue, we decline to adopt AT&T's proposal that we require that incumbent LECs allow collocated equipment to be used for "hubbing." "

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC. Docket No. 96-98 and 95-185, First Report and Order (1996), at ¶ 580 and 581(emphasis added).

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July 15, 1997

Mr. Dave Dorman
Group President
Pacific Bell
130 Kearny Street, Suite 3700
San Francisco, California 94108

Re: Remote Switch Modules

Dear Mr. Dorman:

This letter is intended to confirm your understanding of the facts relevant to Pacific Bell's ("PacBell's") refusal to permit Brooks Fiber Communications ("BFC") to install remote switch modules ("RSMs") in PacBell's central offices ("COs"). As you know, without the installation of RSMs, Brooks' end users cannot transmit data over PacBell's unbundled loops at speeds equivalent to those which PacBell is capable of providing to its own end users. This continued disparity is unacceptable to Brooks, and further inhibits the development of competition in the local market.

Because of your company's continued unwillingness to allow Brooks to install RSMs, Brooks cannot offer comparable and competitive services due to Lucent Technologies, Inc.'s ("Lucent's") hardware limitations. We, therefore, cannot effectively compete with PacBell on a product/service level. PacBell's engineers understand this equipment limitation. Lee Bauman, PacBell's Vice President, Local Competition, after delays dating back to February 1997, again confirmed this information with executives and engineers from Lucent on June 27, 1997. Further, your personnel have agreed that our utilization of RSMs would (a) reduce the space Brooks currently rents in PacBell's COs, (b) reduce power consumption, and (c) represents the most optimized cost option for Brooks to deliver services via the unbundled loop. Because of the high cost of PacBell's unbundled loops, Brooks must pursue the most cost efficient means of provisioning services if we are to effectively compete with PacBell and other local exchange carriers in a variety of consumer markets. Your unreasonable denial of our request to install RSMs further exacerbates an already unleveled playing field.

Brooks Fiber Communications of San Jose, Inc.
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On April 28, 1997, I sent a letter to you addressing several issues critical to Brooks' ability to compete with PacBell in California. I chose to write to you, specifically for three reasons: first, to express the urgent nature of the problems Brooks continues to experience with PacBell; second, to inform you of the "revolving executives/management" interfaces your company keeps imposing on us; and three, to provide you with an opportunity to personally ensure the resolution of these issues.

Despite your failure to personally respond to the April 28th letter, I met with representatives from PacBell on May 15, 1997 in order to address each of the issues identified in the letter. John B. Doolittle, PacBell's Vice President, Industry Markets Group did not attend the May 15, 1997 meeting. However, Mr. Doolittle represented in a letter dated June 6, 1997 that PacBell was reconsidering, among other issues, whether to permit Brooks to install RSMs in PacBell's central offices:

> "[W]e have been carefully evaluating the information you provided regarding the transmission rate limitation of Digital Loop Carrier (DLC) equipment. Based on that evaluation, we are willing to engage in further discussions between our companies on this subject."

In light of the fact that PacBell subsequently verified the information we provided, Mr. Doolittle's statement was apparently intended solely to delay our pursuit of RSMs in formal regulatory and/or civil proceedings. Moreover, since I first met with PacBell representatives back in February 1997 to explain the reasons RMS were necessary to provide parity services, no PacBell representative has contested the fact that RSMs are the only economically efficient solution at this time. In fact, your representatives have confirmed our understanding that unless RSMs are installed in the CO, Brooks will not have the ability to offer parity services over PacBell loops until sometime in mid-1998 (best case).

Brooks has invested hundreds of millions of dollars to deploy the most technologically advanced networks in California. Unfortunately, Brooks' ability to effectively market this superior infrastructure is dependent upon the efficient utilization of PacBell's unbundled loops in its 30+ collocations. Without RSMs, we cannot do so. Your anti-competitive refusal in this regard is contrary to state and federal laws mandating incumbent local exchange carriers to open their networks to competition, and provide competitive local exchange carriers ("CLCs") access to unbundled network elements on a nondiscriminatory basis. According to the Federal Communications Commission's (FCC's) First Report and Order In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ("Interconnection Order"):

> "[T]he equal in quality standard to section 251(c)(2) [of the Telecommunications Act of 1996] requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party.

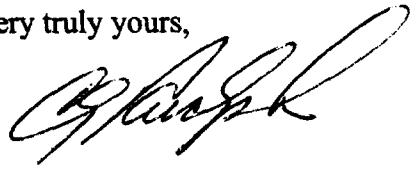
> ...[T]his duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks."
>
> Interconnection Order at ¶ 224 [emphasis added].

We believe your decision to deny our request to install RSMs is in direct violation of this order. Moreover, it is a clear illustration of the PacBell's unwillingness to comply with the unambiguous regulations set forth by the Congress, the FCC and the California Public Utilities Commission ("CPUC").

In recent Complaint proceedings at the CPUC, PacBell's Resale Operations Vice President, Industry Markets Group, John Stankey, retracted a portion of his direct testimony in which he offered CLCs direct access to PacBell's primary order entry system. On cross-examination, Mr. Stankey defended this retraction on the grounds that PacBell did not want to establish policies and practices that were inconsistent with its new parent company, SBC Communications Inc. ("SBC"). In contrast to this sworn statement, PacBell now conveniently ignores the fact that SBC permits Brooks to install RSMs in its COs to remedy the problem with the SLC 2000s. With regard to Mr. Stankey's retraction and the RSM issue, the only consistency Pacbell has demonstrated is its efforts to stifle competition and deny CLCs parity with PacBell's retail services.

In summary, it is abundantly clear from PacBell's consistent anti-competitive policies and practices that if effective competition is to develop in the local market, it will not occur without FCC, CPUC or judicial intervention.

Very truly yours,



Clifford G. Rudolph
President, Western Region

cc: Lee Bauman
John B. Doolittle